

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

## MEMORANDUM AND ORDER

December 23, 2015

DEIN, U.S.M.J.

On December 18, 2015, Allison Avagianos, proceeding pro se, filed a document captioned as a “Motion for an Injunction” in which she alleges that her rights under the Eighth Amendment of the United States Constitution have been and are being violated because she is not receiving adequate medical treatment while incarcerated at MCI Framingham. The plaintiff also filed a supporting affidavit.<sup>1</sup>

Under the Federal Rules of Civil Procedure, “[a] civil action is commenced by filing a complaint with the court,” Fed. R. Civ. P. 3, and any separate motion for relief is ancillary to the complaint. Because the plaintiff’s motion for an injunction provides notice of her claims and in light of the urgent nature of her allegations, the Court will allow the motion for the injunction to serve as the complaint.

Accordingly:

1. The “Motion for an Injunction” (#1) and affidavit (#2) shall be construed as the complaint in this action. The Clerk shall make the necessary changes to the docket.

<sup>1</sup>In a separate order, the Court directed the plaintiff to pay the filing fee or file a motion for leave to proceed in forma pauperis with a six-month prison account statement. The deadline for complying with that order is January 11, 2016.

2. Notwithstanding the above, the plaintiff may file an amended complaint in accordance with Rule 15(a) of the Federal Rules of Civil Procedure.

3. The Clerk shall provide the plaintiff with the form for Consent/Refusal of Magistrate Judge Jurisdiction and the instructions for that form (“consent package”).

4. The Clerk shall issue summonses as to all defendants. The plaintiff shall ensure that service of the summons, complaint, consent package, and this order is completed in accordance with Rule 4 of the Federal Rules of Civil Procedure and Local Rule 4.1 within 90 days of the date of this order.

Should the plaintiff elect to have the United States Marshals Service (“USMS”) complete service, she shall provide all papers to be served as well as a completed USM-285 form for each defendant to the USMS. The USMS shall complete service as directed by plaintiff with all costs of service to be advanced by the United States. The Clerk shall provide the plaintiff with form and instructions for service by the USMS.

5. If the plaintiff seeks preliminary injunctive relief (*i.e.*, relief prior to the final adjudication of her claims), she may seek such relief in accordance with Rule 65 of the Federal Rules of Civil Procedure. Any such motion must be served on the defendants and filed with this Court. The plaintiff may, but is not required to, serve any motion for a preliminary injunction with the summons and complaint.

SO ORDERED.

/s/ Judith Gail Dein  
Judith Gail Dein  
United States Magistrate Judge